

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

In re Patent Application of:  
Kazumichi UOTANI et al.

Application No.: 10/579,731

Confirmation No.: 8869

Filed: May 17, 2006

Art Unit: 1654

For: Sialogogue, oral composition and fool  
product containing the same

---

Examiner: Audet, M.A.

**REPLY TO PTO-90 OFFICE COMMUNICATION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Communication mailed May 2, 2008, Applicants provide the following comments.

The Examiner is without authority to issue such a communication. On June 25, 2007, Applicants submitted a proper response to a Non-Final Office Action that is entitled to full search and consideration. In accordance with MPEP § 710.02(b), a shortened statutory period of one (1) month is properly issued in the following circumstances:

(A) Requirement for restriction or election of species only (no action on the merits) ..... MPEP § 809.02(a) and § 817.

(B) When a reply by an applicant for a nonfinal Office action is *bona fide* but includes an inadvertent omission, the examiner may set a 1 month (not less than 30 days) shortened statutory time period to correct the omission .... MPEP § 710.01 and § 714.03.

Neither of the aforementioned circumstances is applicable to the response filed on June 25, 2007 or the subsequent Reply to Notice of Non-Compliant Amendment filed on December 5,

2007. Accordingly, the Examiner's outstanding communication is without basis. Moreover, Applicants respectfully submit that the issues raised by the Examiner could and should have been made within the context of an Office Action.

For the foregoing reasons, the Examiner is requested to fully consider the response and issue an Office Action considering the merits of the claims. If the Examiner persists in this requirement, Applicants preserve their rights to file a petition to the Commissioner.

The present submission is being timely filed within thirty (30) days of the mailing date of the Notice. Accordingly, no extension of time fees should be due.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Monique T. Cole, Reg. No. 60,154 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No.: 10/579,731

Docket No.: 0171-1273PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: June 2, 2008

Respectfully submitted,

By  # 32 868

Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant